

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6397 of 1992

with

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For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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DHARMU KASU VARLI

Versus

STATE OF GUJARAT

Appearance:

MR JOY MATHEW for Petitioner No. 1

Mr. S.S.Patel, Addl. GOVERNMENT PLEADER
for Respondent No. 1

MR DD VYAS for Respondent No. 2-3

RULE SERVED BY DS for Respondent No. 4-7

CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE SHARAD D.DAVE

Date of decision: 18/09/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1. These two petitions are raising common questions of facts and law and hence are disposed of by this common judgment.

2. The petitioners have made a grievance that the lands were taken in possession by the respondents for construction of a road without following any procedure under the law and without payment of compensation as contemplated under the law.

3. Mr.Vyas, learned counsel appearing for some of the respondents submitted that Panchayat was acting as an agency and has constructed a road as indicated by the Executive Engineer. In fact the State is required to acquire the land for the purpose of construction of road.

4. So far as the State Government is concerned, despite the issuance of rule, no replies have been filed. Last time when the matters were called out, it was noticed that the replies were not filed and thereafter it was for the State to take appropriate action with a view to see that replies are filed in the matters.

5. In view of the fact that the contentions raised by the petitioners are not controverted by the respondents, particularly the State, there is no reason as to why not to accept the contentions raised by the petitioners, more particularly, when it is the case of the other respondents that the road has been constructed over the land for which understanding was arrived at. According to other respondents, the road was required to be constructed under the Jawahar Rojgar Yojna and people were required to contribute. No such scheme has been placed before us. Even if such scheme is placed, it is doubtful whether the property of individuals can be taken into possession without following procedure of law or not? Mr.Vyas submitted that lands were given for the scheme voluntarily. Since 1992, the petitioners have raised a grievance that they are not consenting parties and lands were taken in possession without their consent. These are disputed questions.

6. In view of the fact that the lands of the petitioners are taken in possession, may be of a very small size, without following the procedure, the proceedings are now required to be initiated. These poor Aadivasis must be compensated by the State if their lands

were taken in possession. Under the circumstances, we direct the State Government to take appropriate action in the matters so as to see that appropriate action is taken in accordance with law for the lands taken in possession. The actions shall be initiated within a period of three months from the date of receipt of writ. The petitions stand allowed to the aforesaid extent.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

srilatha